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STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:)	Docket No. 00-AFC-4
)	
)	
MIRANT'S (FORMERLY SOUTHERN)	INTERVENOR CITY AND
ENERGY) POTRERO POWER PLANT)	COUNTY OF SAN FRANCISCO
UNIT 7 PROJECT)	MOTION TO STAY THE
)	SCHEDULE ADOPTED BY
)	THE JUNE 4, 2003
)	INTERIM ORDER
)	
)	

Pursuant to Sections 1716.5 and 1203 of the California Energy Commission (CEC) Rules of Practice and Procedures (*see*, Title 20, California Code of Regulations, sections 1716.5 and 1203), the City and County of San Francisco (CCSF) moves for a stay of the Interim Order issued on June 4, 2003 (Order). Significant developments that have occurred since the issuance of the Order provide good cause to stay the schedule adopted by the Order, pending a status conference where the impact of these developments can be evaluated.

The Order sets forth an ambitious schedule for review of the amendment addressing the Cooling Tower System that Mirant filed on July 25, 2003. The Committee should stay this schedule and order a status conference where it can consider the current state of events

relevant to this proceeding. Since the Order was issued on June 4, two significant events affecting this proceeding have occurred:

- (1) On July 14, 2003, Mirant filed a petition with the United States Bankruptcy Court in the Northern District of Texas, under Chapter 11 of the Bankruptcy Code.
- (2) On July 18, 2003, Resolution 458-03, adopted by the San Francisco Board of Supervisors, became effective. (See attached.) The Resolution provides that “it shall be the policy of the City and County of San Francisco to oppose the siting, licensing and construction of the Potrero 7 power plant.”

Mirant’s bankruptcy filing raises questions about Mirant’s intentions regarding this project. At the very least, the Committee should ascertain whether Mirant intends to proceed with the licensing and development of Potrero 7 and whether it has the authority to do so, in view of its Chapter 11 filing. There is nothing on the record that provides any information regarding these matters. While the filing of a bankruptcy petition is not a bar to continuing the licensing process, applicants sometimes request suspension or termination of licensing proceedings after filing a bankruptcy petition. It is reasonable for the Committee to request information from Mirant regarding the impact of its bankruptcy on this proceeding before requiring the expenditure of more resources from Commission Staff and other parties.

On July 8, 2003, the Board of Supervisors adopted Resolution 458-03, by a vote of 10-0.¹ Under the Charter of the City and County of San Francisco, the Resolution became effective on July 18, 2003.² The passage of this Resolution is significant because it establishes that the Board, as a matter of policy, opposes the Potrero 7 project. In order to develop the Potrero 7 project, with either the original or the amended cooling system, Mirant will require one or more agreements with the City that will require Board approval. In view of the clear policy statement contained in the Resolution, a stay of the schedule should be granted, pending a status conference to allow the Committee to consider the impact of this Resolution.

Even in the best of circumstances, without the uncertainties created by the two events identified above, the schedule set forth by the Order is unrealistic. The Order

¹ One member of the eleven member Board was absent from the entire meeting of July 8, 2003.

requires, among other things, that data requests on the amendment be filed within 15 days of the filing of the amendment, which would be August 11. The amendment is not small or insignificant. The preparation of data requests on this amendment will require substantial work by technical experts. The compressed schedule adopted by the Interim Order does not provide a reasonable opportunity for review of the amendment.

For the reasons discussed above, CCSF requests a stay of the schedule adopted by the Interim Order, pending a status conference where the issues identified herein can be discussed.

Dated: August 5, 2003

Respectfully submitted,

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By: _____
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ATTORNEYS FOR INTERVENOR
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² Charter Section 3.103 provides that an ordinance or resolution becomes effective not more than ten days after passage by the Board, unless the Mayor disapproves the ordinance or resolution and returns it to the Board.